IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4677 OF 1991

1. Dattatraya Gangaram Shinde,
adult,

2. Mahadeo Gangaram Shinde,
adult,

3. Balkrishna Gangaram Shinde,
adult,

All residing at 233, Old Bazar,
Kirkee, Pune-3. .... Petitioners

- Versus -

Shankar Shyamsing Pardeshi,
since deceased, by his LRs:-

1. Smt. Tarabai Shankar Pardeshi,
age 48, Occ: Household,

2. Kum. Meena Shankar Pardeshi,
age 28, Occ: Service,

3. Mohan Shankar Pardeshi,
age 25, Ori. Driver,

4. Kum. Aruna Shankar Pardeshi,
age 20, Occ: Nil,

5. Kum. Sharada Shankar Pardeshi,
age 17, Occ: Student,

6. Chandu Shankar Pardeshi,
age 15, Occ: Student,

Nos.5 and 6 are minors, through
their guardian No.1.

All r/at 233, Old Bazar, Kirkee,
Pune-3. .... Respondents

Shri V.B. Rajure for the Petitioners.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 22, 2004

ORAL JUDGMENT:

1. Heard the learned Advocate for the petitioners. None present for the respondents. Perused the records.

2. The petitioners challenge the judgment and order dated 25-2-1991 passed by the Addl. District Judge, Pune in Civil Appeal No.1083 of 1987 as well as the decree of dismissal of the suit dated 31-8-1987 passed by the Addl. Civil Judge, Pune in Civil Suit No.1385 of 1983.

3. The petitioners herein had filed the suit for eviction of the respondents from the suit premises comprising of room No.14 situated on the ground floor of the building Gangaram, bearing No.233 at Old Bazar, Kirkee, Pune. The eviction of the respondents was sought for on three grounds, namely, failure to pay the arrears of rent, bona fide need of the premises for personal occupation of the petitioners, and thirdly on the ground that the respondents had acquired suitable alternative accommodation and therefore are not in need of the suit premises. The petitioners had also prayed for recovery of arrears of rent. The trial Court, after

considering the evidence no record, partly decreed the suit as regards the claim for arrears of rent, however, dismissed the suit for eviction of the respondents from the suit premises. Being aggrieved, the petitioners filed appeal and the Appellate Court, after hearing the parties and going through the records, confirmed the decree passed by the trial Court.

4. Upon hearing the learned Advocate for the petitioners and on perusal of the records, it is seen that both the Courts have arrived at concurrent findings in relation to all the three grounds on which the eviction of the respondents was sought for from the suit premises.

5. As regards the ground relating to default of payment of rent, undisputedly, the petitioners had sent notice in that regard to the respondents and upon receipt of such notice the respondents had remitted the amount of rent by money orders which were refused by the petitioners. In other words, both the Courts have held that there was no lapse on the part of the respondents in complying with the required provision of law in relation to payment of rent and therefore there was no case for eviction of the respondents on the alleged ground of non-payment of rent. The refusal of money order by the petitioners cannot amount to giving rise to

the ground for eviction of the tenant on the allegation of non-payment of rent. On the contrary, it discloses that the respondents were ready and willing to pay the rent but it was illegally refused by the petitioners. The refusal to accept the rent on the part of the petitioners would not create a ground in favour of the petitioners to seek eviction of their tenant from the suit premises on the alleged ground of non-payment of rent. Hence no fault can be found with the concurrent finding arrived at by the Courts below in relation to failure on the part of the petitioners to establish the non-payment of rent by the respondents to get a decree of eviction of the respondents from the suit premises on the said ground of non-payment of rent.

6. As regards the bona fide need of the premises for personal occupation, the Courts below have arrived at concurrent finding about the residential accommodation being in possession of the petitioners, besides the petitioners having evicted yet another tenant by name Pawar and being in possession of the same since 1984. In addition thereto, the evidence on record, as revealed from the findings arrived at by the Courts below, disclose that the petitioners are in possession of a plot admeasuring 1 acre and 36 gunthas wherein the petitioners have constructed a residential building and had plan to construct three buildings, each consisting

of three floors. This apparently disclose that the ground of bona fide need of the suit premises is totally devoid of substance and the concurrent findings arrived at by the Courts below are clearly borne out from the record and warrant no interference in writ jurisdiction.

7. As regards the third ground relating to acquisition of alternative accommodation by the respondents, the Courts below, on analysis of the evidence on record, have arrived at the concurrent finding that though the respondents were allotted alternative accommodation, the same was not suitable for the respondents and further that the respondents even tried to shift to reside in the said accommodation but it proved to be harmful to their health to stay in the locality where the alternative accommodation was situated. Besides, even during that time the children of the respondents continued to occupy the suit premises. These are the findings of fact based on detail analysis of the evidence on record and the petitioners have not been able to disclose any perversity in the said finding nor the same to be contrary to the materials on record.

8. In the result, therefore, there is no case made out for interference in the concurrent findings arrived at by the Courts below regarding failure on the part of the petitioners to establish their case for eviction of the

respondents from the suit premises. Therefore, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.